

1 Ron Kilgard, AZ Bar No. 005902
2 KELLER ROHRBACK L.L.P.
3 3101 North Central Avenue, Suite 1400
4 Phoenix, Arizona 85012-2600
5 Telephone: (602) 248-0088
Facsimile: (602) 248-2822
rkilgard@kellerrohrback.com

6 *Attorneys for Plaintiffs*

7 (*additional counsel listed at signature*)

9 IN THE UNITED STATES DISTRICT COURT

10 FOR THE DISTRICT OF ARIZONA

11 TUCSON DIVISION

12 Elizabeth Crump, on behalf of herself
13 and all others similarly situated,

14 Plaintiffs,

15 vs.

16 Fiat Chrysler Automobiles N.V.; FCA
17 US LLC,

18 Defendants.

19
No. _____
**COMPLAINT - CLASS ACTION
DEMAND FOR JURY TRIAL**

20 I. INTRODUCTION

21 Plaintiff Crump, individually and on behalf of all others similarly situated (“the
22 Class”), alleges the following against auto manufacturer/distributor FCA US LLC (“FCA”)
23 and its corporate parent Fiat Chrysler Automobiles N.V. (together, “Fiat Chrysler” or
24 “Defendants”), based where applicable on personal knowledge, information and belief, and
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1 the investigation of counsel. This Court has jurisdiction over this Action pursuant to the
 2 Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d).
 3

II. NATURE OF THE ACTION

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 5 1. Fiat Chrysler consumers did not receive what they paid for when they bought
 6 or leased one of the following gasoline-powered vehicles (collectively, the “Class
 7 Vehicles”):
 8

- 9 a. 2011-2016 MY¹ Dodge Journey (FWD²)
- 10 b. 2011-2014 MY Chrysler 200 / Dodge Avenger (FWD)
- 11 c. 2011-2012 MY Dodge Caliber (FWD, CVT³)
- 12 d. 2011-2016 MY Jeep Compass/Patriot (FWD, CVT)

13 2. Approximately 900,000 Fiat Chrysler consumers like Plaintiff Crump are
 14 outraged to learn from news reports that surfaced on March 13, 2019 that they must (among
 15 other things) devote time and energy to obtaining critical vehicle repairs.
 16

17 3. But these just-announced repairs are no ordinary “in and out” fixes.
 18 Reportedly the fixes include a replacement of Class Vehicles’ catalytic converter and
 19 changes to the powertrain control module.⁴
 20

21
 22
 23
 24 ¹ Model Year.

25 ² Front-wheel drive.

26 ³ Continuously variable transmission.

27 ⁴ Kelsey Mays, *Chrysler, Dodge, Jeep Emissions Recall: What Owners Should Know*, Cars
 28 (Mar. 14, 2019), <https://www.cars.com/articles/chrysler-dodge-jEEP-emissions-recall-what-owners-should-know-1420757590245/> (last visited Mar. 15, 2019).

1 4. Catalytic converters are comprised of, in part, precious metals, such as
2 palladium. The market for palladium is “already reeling from shortages.”⁵

3 5. Because the equipment to perform repairs on their vehicles may be in short
4 supply, and the vehicles’ fixes are being made available on a set quarterly schedule with
5 the oldest vehicles first, consumers must wait their turn for a fix. Consumers’ vehicles may
6 thus become an idled resource, parked in driveways without the necessary registrations to
7 be driven, sold, or otherwise utilized.

8 6. And—perhaps most outrageous of all—consumers may not be able to renew
9 their vehicles’ registrations if emissions testing is required in their jurisdiction. In
10 California, where tens of thousands of Class Vehicles are located, regulators have already
11 made this restriction abundantly clear.

12 7. In the words of the Environmental Protection Agency’s March 13, 2019
13 announcement (the “EPA Announcement”), “[o]wners of affected vehicles will receive
14 notification [f]rom [sic] FCA when parts are available for them to bring their vehicle into
15 be repaired, and owners can continue to drive their vehicles in the meantime. Owners who
16 live in locations subject to inspection and maintenance may be required to have the recall
17 performed prior to having the inspection performed.” Further, announcements from the
18 EPA leave the door open for additional vehicles to be subject to recall for similar reasons.
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25 5 Justina Vasquez and Marvin Perez, *Fiat Recall Leaves Palladium Buyers Bracing for*
26 *‘Supply Shock’*, Bloomberg (Mar 13, 2019),
27 [https://www.bloomberg.com/news/articles/2019-03-13/fiat-recall-leaves-palladium-](https://www.bloomberg.com/news/articles/2019-03-13/fiat-recall-leaves-palladium-buyers-bracing-for-supply-shock)
28 [buyers-bracing-for-supply-shock](https://www.bloomberg.com/news/articles/2019-03-13/fiat-recall-leaves-palladium-buyers-bracing-for-supply-shock) (last visited Mar. 15, 2019).

1 8. Notwithstanding the risk that consumers may not be able to pass required
2 emissions testing without a fix, the EPA Announcement urges patience “[d]ue to the large
3 number of vehicles involved and the need to supply replacement components—specifically
4 to the vehicle’s catalytic converter[.]” Accordingly, the “recall will be implemented in
5 phases during the 2019 calendar year beginning with the oldest vehicles first.” The EPA
6 announcement set forth a schedule for implementation of the recall that will last for the
7 duration of 2019:

- 8 a. 2011 MY - Q1 2019
9 b. 2012 MY - Q2 2019
10 c. 2013/2014 MY - Q3 2019
11 d. 2015/2016 MY - Q4 2019

12 9. The California Air Resources Board took a blunter approach in its own
13 announcement (the “CARB Announcement”). In a significant announcement for all
14 affected consumers in California, CARB has declared that **consumers “who fail to get the**
15 **necessary repairs will not be able to register their vehicles.”** Make no mistake, this
16 recall is anything but “voluntary” and “routine” for residents of California.

17 10. Thus, at a minimum, consumers are facing the following obstacles:
18 a. Their vehicles’ emission systems are not working the way they expected
19 the systems to work when they purchased or leased their vehicles.
20 b. They must wait for their vehicles’ turn to get it fixed, assuming both 1)
21 that the fix will be a comprehensive solution that will not cause new
22 problems.
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1 issues, and 2) that consumers don't have to pay for additional repairs in
 2 order for technicians to implement the fix.

- 3
- 4 c. Their vehicles may not be able to pass emissions testing until they are
 5 repaired. In California, this is a certainty according to CARB. Of
 6 course, if the vehicle can't be registered, California consumers may not
 7 be able to sell their vehicle while awaiting repairs—or otherwise face
 8 restricted options for sale while awaiting repairs (options which may
 9 affect the value a consumer can obtain).
- 10
- 11 d. The resale value of the Class Vehicles may have declined as a result of
 12 these and other emissions-related announcements by EPA and CARB.

13 11. After the EPA and CARB Announcements went live, FCA was contacted for
 14 comment about the recall. FCA indicated that the recall "was accounted for in last year's
 15 financial documents."⁶ But FCA has still said nothing to the vast majority of its own
 16 consumers, despite the fact that FCA has been under considerable scrutiny in the wake of
 17 its EcoDiesel emissions issues.⁷ Instead of disclosing to consumers the true nature and
 18 extent of its vehicles' emissions issues, FCA has continued its ardent efforts to boost its
 19 own bottom line, at consumers' considerable expense and inconvenience.

20

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24 ⁶ *Id.*

25 ⁷ "The company declined to release the expected cost of the recall but said it was
 26 accounted for in last year's financial documents." See Eric D. Lawrence, *Fiat Chrysler*
 27 *to recall more than 860,000 vehicles in new emissions probe, EPA says*, Detroit Free
 Press (Mar. 13, 2019) <https://www.freep.com/story/money/cars/chrysler/2019/03/13/fca-recall-emissions/3149654002/> (last visited Mar. 15, 2019).

1 12. Needless to say, as of March 13, 2019, FCA consumers once again find
2 themselves in an emissions bind, and once again, this conundrum is of FCA's making.
3
4

III. PARTIES

A. Plaintiff

6 13. Plaintiff **Elizabeth Crump**, a resident of Vail, Arizona, is the owner of a
7 2014 Jeep Compass with her husband, Geoffrey Crump. Mr. and Ms. Crump purchased the
8 Class Vehicle for approximately \$24,000 in February 2014. Plaintiff has received no
9 information directly from FCA related to the March 13, 2019 announcement about any
10 emissions issues with his Class Vehicles. Plaintiff would not have purchased the Class
11 Vehicle, or would have paid less for her vehicle, had she known that it would not comply
12 with emission standards; that it may require one or more emissions repairs to become
13 emissions compliant; that it may not retain its resale value; and that it may not in the future
14 achieve the advertised performance and/or fuel economy.
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16

B. Defendants

17 14. Defendant **FCA US LLC** ("FCA") is a Delaware limited liability company.
18 Defendant **Fiat Chrysler Automobiles N.V.** ("Fiat" or, together with FCA, "Fiat
19 **Chrysler**") is FCA's corporate parent. In 2009, Fiat's predecessor, Fiat S.p.A., began its
20 acquisition of FCA's predecessor, Chrysler Group LLC. The acquisition was completed
21 in January 2014, at which time Chrysler Group LLC became a wholly-owned indirect
22 subsidiary of Fiat and was renamed FCA US LLC. FCA's principal place of business and
23 headquarters is located in this District at 1000 Chrysler Drive, Auburn Hills, Michigan
24 48326.
25
26
27
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1 15. FCA is a motor vehicle manufacturer and a licensed distributor of new,
2 previously untitled motor vehicles. Like its predecessor, Chrysler, FCA is one of the “Big
3 Three” American automakers, in addition to Ford and General Motors.
4

5 16. FCA distributes and sells new and unused passenger cars and motor vehicles
6 under the Chrysler, Dodge, Jeep, Ram, and Fiat brands. Major divisions of FCA also
7 include Mopar, its automotive parts and accessories division, and SRT, its performance
8 automobile division.
9

10 17. Among the motor vehicles FCA has distributed and sold are the following
11 “Class Vehicles”:

- 12 a. 2011-2016 MY Dodge Journey (FWD)
- 13 b. 2011-2014 MY Chrysler 200 / Dodge Avenger (FWD)
- 14 c. 2011-2012 MY Dodge Caliber (FWD, CVT)
- 15 d. 2011-2016 MY Jeep Compass/Patriot (FWD, CVT)

16 18. FCA and its agents have designed, manufactured, distributed, warranted,
17 offered for sale, sold, and leased the Class Vehicles—with the knowledge and intent to
18 market, sell, and lease them in all 50 states, including in Michigan.
19

20 19. Dealers act as FCA’s agents in selling motor vehicles under the Fiat Chrysler
21 name and disseminating vehicle information provided by Fiat Chrysler to customers.
22

23 20. Fiat, the corporate parent of FCA, is a Dutch corporation headquartered in
24 London. Fiat owns numerous European automotive brands in addition to FCA’s American
25 brands, including Maserati, Alfa Romeo, Fiat Automobiles, Fiat Professional, Lancia, and
26
27

1 Abarth. As of 2018, Fiat Chrysler is the eighth largest automaker in the world by sales
 2 alone.⁸

3 21. Subject to a reasonable opportunity for further investigation or discovery,
 4 Plaintiff alleges that FCA employees oversaw or were responsible for approving elements
 5 of design and/or strategies related to emission compliance for the Class Vehicles. Fiat also
 6 sold, offered for sale, introduced into commerce, or delivered the Class Vehicles, with the
 7 intent to market or sell them in all fifty states, including in Arizona.

8 22. Fiat Chrysler developed and distributed the owners' manuals, warranty
 9 booklets, product brochures, advertisements, and other promotional materials relating to
 10 the Class Vehicles, with the intent that such documents should be purposely distributed
 11 throughout all fifty states, including in Arizona. Fiat Chrysler is engaged in interstate
 12 commerce, selling vehicles through its network in every state of the United States.

16 **IV. JURISDICTION AND VENUE**

17 23. This Court has jurisdiction over this Action pursuant to the Class Action
 18 Fairness Act ("CAFA"), 28 U.S.C. § 1332(d), because at least one Class member is of
 19 diverse citizenship from one Defendant, there are more than 100 Class members, and the
 20 aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs.

21 24. This Court has personal jurisdiction over Defendants because they conduct
 22 business in Arizona and have sufficient minimum contacts with Arizona.

27 ⁸ 2018 World Car Group Ranking, Focus2Move, <https://focus2move.com/world-car-group-ranking/> (last visited Mar. 14, 2019).

1 25. This Court has specific jurisdiction over Fiat Chrysler Automobiles N.V.
 2 because it has purposefully availed itself of this forum by directing its agents and
 3 distributor—FCA US LLC, and its dealer agents—to take action here.
 4

5 26. Venue is proper in this District under 28 U.S.C. § 1331(b) because a
 6 substantial part of the events or omissions giving rise to the claims occurred in this District,
 7 as set forth in more detail below, and because Defendants have caused harm to Class
 8 members residing in this District.
 9

10 27. Moreover, FCA has marketed, advertised, sold and leased the Class Vehicles
 11 in this District, and has caused harm to Class Members residing in this District, including
 12 Plaintiff Crump.
 13

14 28. Thus, venue is proper in this District because a substantial part of the events
 15 and omissions giving rise to Plaintiff's claims occurred in this District.
 16

V. FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

17 29. Fiat Chrysler is a multinational corporation and the world's eighth largest
 18 automaker, with \$38.29 billion total current assets.⁹ FCA manufactures and distributes new
 19 passenger cars and motor vehicles such as Chrysler, Dodge, Jeep, Ram and Fiat brands,
 20 and continues to report climbing sales. In fact, FCA reported that 2018 was their highest
 21 calendar year of retail sales in 17 years, with some brands increasing sales as high as 17%.¹⁰
 22

24 29. *Fiat Chrysler Automobiles N.V. Balance Sheet*, MarketWatch,
 25 <https://www.marketwatch.com/investing/stock/fcau/financials/balance-sheet> (last visited
 Mar. 14, 2019).

26 10. *FCA US Reports 2018 December and Full-Year Sales*, Cision PR Newswire (Jan. 3,
 27 2019), <https://www.prnewswire.com/news-releases/fca-us-reports-2018-december-and-full-year-sales-300772429.html> (last visited Mar. 15, 2019).
 28

1 30. Many of FCA's impressive sales figures are built on consumers' trust that
 2 FCA vehicles would remain emissions compliant throughout the vehicles' expected life.
 3 However, Fiat Chrysler has a recent history of failing to deliver on its promises regarding
 4 its vehicles' emissions and reliability. Some of those broken promises are the focus of this
 5 Action.

7 31. Fiat Chrysler knew well before manufacturing and distributing the Class
 8 Vehicles the emissions standards that the Class Vehicles were required to meet. In 2010,
 9 nine years ago, the EPA and NHTSA finalized "a national program consisting of new
 10 standards for model year 2012 through 2016 light-duty vehicles that will reduce
 11 greenhouse gas emissions and improve fuel economy." According to these requirements,
 12 "The EPA greenhouse gas standards require these vehicles to meet an estimated combined
 13 average emissions level of 250 grams of carbon dioxide (CO₂) per mile in model year
 14 2016."¹¹

17 32. Similarly, with respect to nitrogen oxides ("NO_x"), Tier 2 emissions
 18 standards were phased in from 2004 through 2009, with full implementation for new
 19 passenger cars in 2007, well before the model years of the Class Vehicles.

21 33. However, despite ample warning of what the applicable emissions standards
 22 would be, on March 13, 2019, the EPA announced that "FCA has agreed to voluntarily

25 11 *EPA and NHTSA Finalize Historic National Program to Reduce Greenhouse Gases*
 26 *and Improve Fuel Economy for Cars and Trucks*, US EPA, (April 2010),
 27 <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100AKHW.PDF?Dockey=P100AKHW.PDF>,
 28 (last viewed Mar. 14, 2019).

recall 862,520 vehicles in the United States.”¹² These gasoline-powered vehicles are not compliant with emissions standards, as discovered through “in-use emissions investigations conducted by EPA and in-use testing conducted by FCA as required by EPA regulations.”¹³

The screenshot shows a web browser displaying the official website of the United States Environmental Protection Agency (EPA). The page title is "Fiat Chrysler Automobiles – Voluntary Recall". The main content area discusses the recall of 862,520 vehicles due to non-compliance with emissions standards. It provides details about notification, repair phases, and affected vehicle models. A navigation bar at the top includes links for Environmental Topics, Laws & Regulations, About EPA, and a search bar. Below the main content, there is a section for related topics and social media sharing options.

An official website of the United States government.
We've made some changes to EPA.gov. If the information you are looking for is not here, you may be able to find it on the [EPA Web Archive](#) or the [January 19, 2017 Web Snapshot](#). [Close X](#)

EPA United States Environmental Protection Agency

Environmental Topics Laws & Regulations About EPA Search EPA.gov

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Fiat Chrysler Automobiles – Voluntary Recall

Fiat Chrysler Automobiles (FCA) has agreed to voluntarily recall of 862,520 vehicles in the United States. This recall is the result of in-use emissions investigations conducted by EPA and in-use testing conducted by FCA as required by EPA regulations.

Owners of affected vehicles will receive notification from FCA when parts are available for them to bring their vehicle into be repaired, and owners can continue to drive their vehicles in the meantime. Owners who live in locations subject to inspection and maintenance may be required to have the recall performed prior to having the inspection performed.

Due to the large number of vehicles involved and the need to supply replacement components – specifically to the vehicle's catalytic converter – this recall will be implemented in phases during the 2019 calendar year beginning with the oldest vehicles first.

Owners of affected vehicles need to wait until they receive notification from FCA prior to scheduling an appointment at the dealership. Below is the schedule for each phase of the recall by model year:

- 2011MY - Q1 2019
- 2012MY - Q2 2019
- 2013/2014MY - Q3 2019
- 2015/2016MY - Q4 2019

Vehicles affected are as follows:

- 2011-2016 MY Dodge Journey (JC FWD)
- 2011-2014 MY Chrysler 200 / Dodge Avenger (JS FWD)
- 2011-2012 MY Dodge Caliber (PM FWD CVT)
- 2011-2016 MY Jeep Compass/Patriot (MK FWD CVT)

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34. The California Air Resources Board (“CARB”) issued a similar announcement the same day, noting “an investigation by [CARB] and the U.S.

¹² *Fiat Chrysler Automobiles Issues Voluntary Recall of Nearly 900,000 Vehicles in the United States*, U.S. EPA, (Mar. 13, 2019) <https://www.epa.gov/newsreleases/fiat-chrysler-automobiles-issues-voluntary-recall-nearly-900000-vehicles-united-states> (hereinafter “EPA Announcement”).

¹³ *Id.*

1 Environmental Protection Agency” and attributing the recall of nearly 900,000 FCA
 2 “passenger cars and SUVs... to a problem with their catalytic converters.”¹⁴ According to
 3 CARB Executive Officer Richard Corey, “[e]xcessive pollution from these vehicles
 4 impacts public health leading to a long list of serious ailments including worsening the
 5 effects of asthma. Thus, fixing the vehicles is in everyone’s best interest.”¹⁵

KELLER ROHRBACK L.L.P.
 3101 North Central Avenue, Suite 1400
 Phoenix, Arizona 85012
 Telephone: (602) 248-0088
 Facsimile: (602) 248-2822

25 ¹⁴ *Fiat-Chrysler announces recall of more than 850,000 passenger vehicles, California*
 26 *Air Resources Board (Mar. 13, 2019)* [https://ww2.arb.ca.gov/news/fiat-chrysler-](https://ww2.arb.ca.gov/news/fiat-chrysler-announces-recall-more-850000-passenger-vehicles)
 27 [announces-recall-more-850000-passenger-vehicles](#) (hereinafter “CARB
 Announcement”).

28 ¹⁵ *Id.*


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Fiat-Chrysler announces recall of more than 850,000 passenger vehicles

50,000 vehicles affected in California

For immediate release

DATE

March 13, 2019

RELEASE NUMBER

19-12a

CONTACTS

Dave Clegern

Public Information Office

dave.clegern@arb.ca.gov

(916) 322-2990

CATEGORIES

Topics Enforcement

Programs Aftermarket, Performance,
and Add on Parts

SACRAMENTO – Fiat-Chrysler of America (FCA) today announced a recall of more than 850,000 gasoline-powered passenger cars and SUVs due to a problem with their catalytic converters. The recall was announced after an investigation by the California Air Resources Board (CARB) and the U.S. Environmental Protection Agency (EPA). There are about 50,000 of these vehicles in California.

In most of the country this is a voluntary recall. But in California, drivers who fail to get the necessary repairs will not be able to register their vehicles.

"Ensuring cars deliver the reductions of harmful pollutants is an urgent matter in California as we have several regions with the worst air quality in the country," said CARB Executive Officer Richard Corey. "Excessive pollution from these vehicles impacts public health leading to a long list of serious ailments including worsening the effects of asthma. Thus, fixing the vehicles is in everyone's best interest."

FCA is recalling these vehicles because they emit NO_x above regulatory limits. FCA's own data and test results confirmed that the catalytic converters in these vehicles were malfunctioning. CARB testing helped the company find the appropriate solution to the problem.

NO_x emissions in California are the most important contributor to ambient ozone and a key contributor to fine particulate matter pollution (PM 2.5) which is associated with premature death, asthma emergency room visits, increased hospitalizations due to exacerbation of chronic heart and lung diseases, and other serious health impacts.

California is home to both the highest ozone levels (South Coast) and ambient particulate matter levels (San Joaquin Valley) in the United States. Approximately 10 million Californians live in communities that exceed the federal ozone and particulate matter ambient air quality standards that were put in place to protect public health.

The vehicles affected by this recall are:

- 2011-2016 MY Dodge Journey (JC FWD)
- 2011-2014 MY Chrysler 200/Dodge Avenger (JS FWD)
- 2011-2012 MY Dodge Caliber (PM FWD CVT)
- 2011-2016 MY Jeep Compass/Patriot (MK FWD CVT)

Because of the large number of vehicles and two generations of engines involved the actual recall will occur in phases, by model year:

- 2011 - Q1 2019
- 2012 - Q2 2019
- 2013/14 - Q3 2019
- 2015/16 - Q4 2019

Owners will be notified by FCA to bring their individual vehicles in during these periods.

35. CARB also stressed that the Class Vehicles "emit NO_x above regulatory limits" and that "NO_x emissions in California are the most important contributor to ambient ozone and a key contributor to fine particulate matter pollution (PM 2.5) which is associated with premature death, asthma emergency room visits, increased hospitalizations due to exacerbation of chronic heart and lung diseases, and other serious health impacts."¹⁶

¹⁶ *Id.*

1 36. According to the EPA, “[d]ue to the large number of vehicles involved and
 2 the need to supply replacement components—specifically the vehicle’s catalytic
 3 converter—this recall will be implemented in phases during the 2019 calendar year
 4 beginning with the oldest vehicles first.”¹⁷ Thus, it is not clear if the required replacement
 5 components are readily available.

7 **A. Defendants’ Emission-related Problems are Familiar**

8 37. While the scope of Fiat Chrysler’s latest emissions announcement regarding
 9 nearly 900,000 noncompliant vehicles is enormous, FCA consumers are experiencing déjà
 10 vu. Just over two years ago, on January 12, 2017, the EPA and CARB issued Notices of
 11 Violation to Fiat Chrysler Automobiles N.V. and FCA US LLC alleging that certain
 12 “EcoDiesel” Ram and Jeep vehicles with 3.0-liter V6 diesel engines in the United States
 13 were equipped with eight Auxiliary Emissions Control Devices (“AECDs”) that were not
 14 disclosed to the EPA, and that the operation of one or more of the AECDs alone or in
 15 combination resulted in excess emissions of NOx.¹⁸

16 38. Consumers who bought or leased the EcoDiesel vehicles filed suit, asserting
 17 that the vehicles emitted significantly more pollutants than consumers reasonably
 18 expected, and more pollutants than were permitted under federal and state clean air laws.

25 ¹⁷ EPA Announcement, *supra* note 13.

26 ¹⁸ *Official Court-Approved Legal Notice: Settlements with Ram and Jeep EcoDiesel*
 27 *Vehicle Owners/Lessees, the Environmental Protection Agency, and the California Air*
 28 *Resources Board*, (2019) https://www.ecodieselsettlement.com/content/dam/fcacourtsettlement/pdf/Long_Form_Note.pdf (last visited Mar. 14, 2019).

1 Plaintiffs further asserted that the defendants intentionally misled consumers about the
 2 qualities and characteristics of the Subject Vehicles.

3 39. In January 2019, following two years of litigation about EcoDiesel vehicles,
 4 Fiat Chrysler announced settlements with regulators and consumers. The terms of the
 5 settlements are described in detail at www.ecodieselsettlement.com.

6 40. In a separate instance, Fiat Chrysler was recently fined \$77 million in U.S.
 7 civil penalties in the fourth quarter of 2018 when it was discovered its model year 2016
 8 U.S.-assembled passenger car fleet fell short of required fuel economy targets.¹⁹

9 41. The penalty, issued because subject vehicles missed Corporate Average Fuel
 10 Economy (CAFE) targets set by NHTSA, was the largest fine imposed on a single
 11 automaker in five years. Fiat Chrysler was the only automaker to pay a fine for the 2016
 12 model year.²⁰

13 42. After years of civil and criminal investigations, fines, and settlements, Fiat
 14 Chrysler still is making news for emissions problems. The EPA and CARB
 15 Announcements address vehicles produced by Fiat Chrysler that once again fail to perform
 16 reliably and as represented. The number of affected vehicles could also increase as the
 17 EPA is continuing to investigate other potentially non-compliant vehicles.

18 23 19 David Shepardson, *Fiat Chrysler paid \$77 million in U.S. fuel economy penalties in*
 19 24 *2018*, Reuters (Feb. 7, 2019) <https://www.reuters.com/article/us-fiat-chrysler-emissions-penalties/fiat-chrysler-paid-us-77-million-in-fuel-economy-penalties-in-2018-idUSKCN1PW2PZ>, (last visited Mar. 14, 2019).

20 25 20 Jay Ramey, *Think you owe the government big? Fiat Chrysler was fined \$77 million*
 26 *for missing fuel economy requirements*, AutoWeek (Feb. 12, 2019),
 27 <https://autoweek.com/article/car-news/fca-fined-77-million-missing-fuel-economy-requirements-report-says> (last visited Mar. 14, 2019).

1 43. In its response to the EcoDiesel settlements, Fiat Chrysler has acknowledged
 2 the importance of renewed trust.²¹ However, in the face of the EPA and CARB
 3 Announcements, it is difficult to imagine a basis for continued trust by consumers. Instead,
 4 they are left to clean up, again, after FCA's defective vehicles.
 5

6 44. Such repeated mistakes have elicited frustration from consumers, the public,
 7 and the Justice Department alike. Jeffrey Bossert Clark, assistant attorney general for the
 8 Justice Department's Environment and Natural Resources Division, has recently called
 9 FCA "a multinational corporate bad actor" in connection with the company's
 10 irresponsibility and lack of accountability to consumers.²²

12 **B. Testing Reveals Emissions Problems With the Class Vehicles**

13 45. The EPA conducts and mandates testing on vehicles that are between one
 14 and seven years old to examine the effectiveness of the vehicle over the course of its useful
 15 life.

17 46. These "in-use emissions investigations conducted by EPA and in-use testing
 18 conducted by FCA as required by EPA regulations" revealed that faulty catalytic
 19 converters will need to be refurbished or replaced.

22 ²¹ *FCA US Reaches Settlements on Emissions Requirements*, Global News Wire (Jan. 10,
 23 2019), <https://www.globenewswire.com/news-release/2019/01/10/1686299/0/en/FCA-US-Reaches-Settlements-on-Emissions-Requirements.html> (last visited Mar. 14, 2019).

24 ²² Ryan Beene and Gabrielle Coppola, *Fiat Hit by Emissions Again with U.S. Recall of 863,000 Cars*, Bloomberg (March 13, 2019),
 25 https://www.bloomberg.com/news/articles/2019-03-13/fiat-chrysler-recalls-almost-900-000-cars-over-emissions-breach?fbclid=IwAR2nasosAW8DbnUhfqBY5tVXCo8zs0SmiBpmZ_xa7AzSl8cTbyg3XTI2ttY (last visited Mar. 14, 2019)

1 47. In 2010, the EPA and NHTSA finalized “a national program consisting of
 2 new standards for model year 2012 through 2016 light-duty vehicles that will reduce
 3 greenhouse gas emissions and improve fuel economy.” According to this rule, “[t]he EPA
 4 greenhouse gas standards require these vehicles to meet an estimated combined average
 5 emissions level of 250 grams of carbon dioxide (CO₂) per mile in model year 2016.”²³
 6

7 48. According to the EPA, “Due to the large number of vehicles involved and
 8 the need to supply replacement components—specifically the vehicle’s catalytic
 9 converter—this recall will be implemented in phases during the 2019 calendar year
 10 beginning with the oldest vehicles first.”²⁴ It is unclear if the required replacement
 11 components are available at this time or just how long consumers will have to wait for their
 12 vehicle’s turn.
 13

14 49. Meanwhile, consumers’ options to drive, sell, or otherwise dispose of their
 15 vehicle(s) may be severely limited in the face of their jurisdiction’s emissions testing
 16 requirements, to say nothing of the vehicle’s underlying resale value.
 17

18 **C. A Key Component of the Class Vehicles’ Emissions System: the Catalytic
 19 Converter**

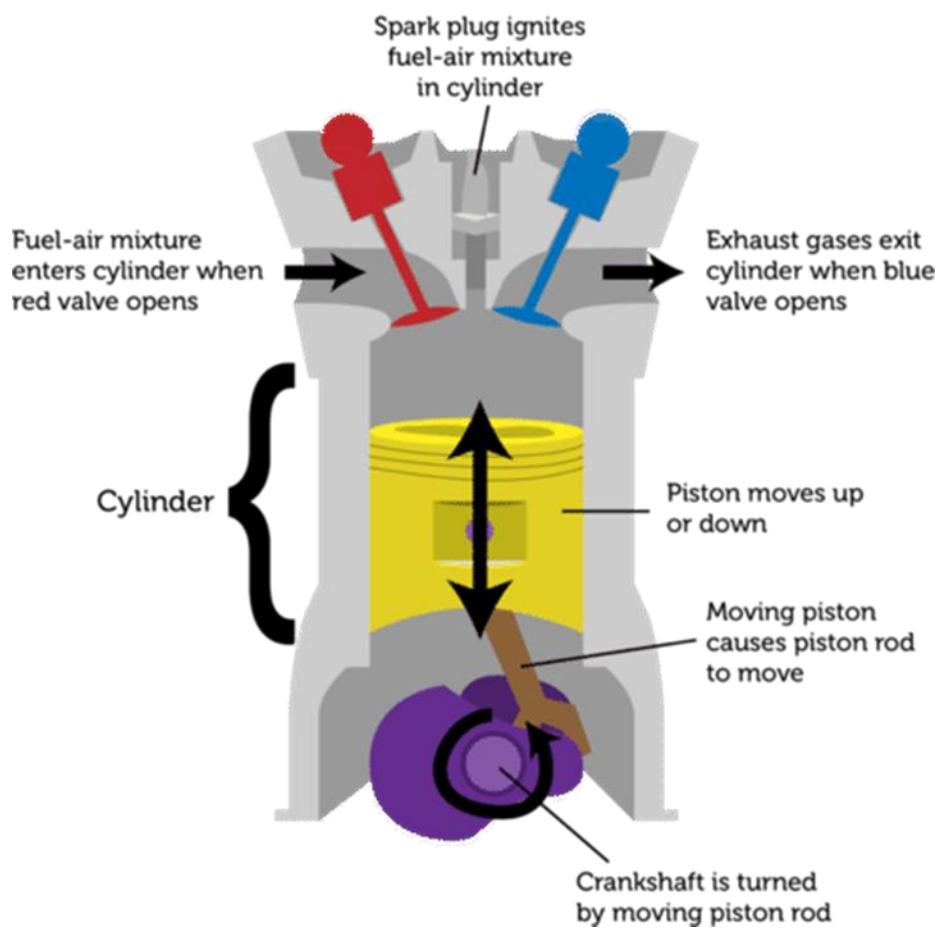
20 50. Gasoline is primarily made up of hydrocarbons. Gasoline is converted into
 21 motion through combustion, also known as burning. In an internal combustion engine
 22 (“ICE”), the ignition and combustion of the fuel occurs within the engine itself. The
 23 process begins by mixing fuel and air, and then inducting this mixture into the cylinder
 24

26 ²³ *EPA and NHTSA Finalize Historic National Program to Reduce Greenhouse Gases
 27 and Improve Fuel Economy for Cars and Trucks, supra note 12.*

28 ²⁴ *EPA Announcement, supra note 13.*

1 during the intake process. After the piston compresses the fuel-air mixture, the spark
 2 ignites it, causing combustion. The expansion of the combustion gases pushes the piston
 3 during the power stroke.²⁵
 4

5 Internal Combustion Engine



21 Image: [https://www.ck12.org/c/physical-science/internal-combustion-
 engine/lesson/Internal-Combustion-Engines-MS-PS/](https://www.ck12.org/c/physical-science/internal-combustion-22 engine/lesson/Internal-Combustion-Engines-MS-PS/)

23 51. Combusting gasoline and oxygen primarily creates CO₂ and water, but
 24 because the combustion process does not burn 100% of its ingredients and because air
 25

26 25 *Internal Combustion Engine Basics*, US Office of Energy Efficiency & Renewable
 27 Energy (Nov. 22, 2013), <https://www.energy.gov/eere/vehicles/articles/internal-combustion-engine-basics>.

1 contains gases other than oxygen (mostly nitrogen), NOx and carbon monoxide (“CO”)
 2 also result. Unburned hydrocarbons, *i.e.* fuel, and residues of fuel additives, may also
 3 remain after the combustion process. Hydrocarbons emitted from tailpipes react with NOx
 4 and sunlight to form photochemical pollution (smog), mainly ground-level ozone.²⁶
 5

6 52. A catalytic converter, an emissions control device used in most gasoline
 7 vehicles in the United States, seeks to reduce the amount of NOx, CO, and hydrocarbons
 8 in tailpipe emissions. The ubiquity of catalytic converters is not a recent phenomenon as
 9 American vehicles have been regularly equipped with them since 1975, when the Clean
 10 Air Act standards on carbon monoxide, hydrocarbons, and nitrates of oxygen came into
 11 effect.²⁷ The “catalyst” in these emissions parts are comprised of platinum, rhodium and/or
 12 palladium, coated into a ceramic honeycomb or beads that are housed in the device, found
 13 between the engine and the exhaust pipe.²⁸

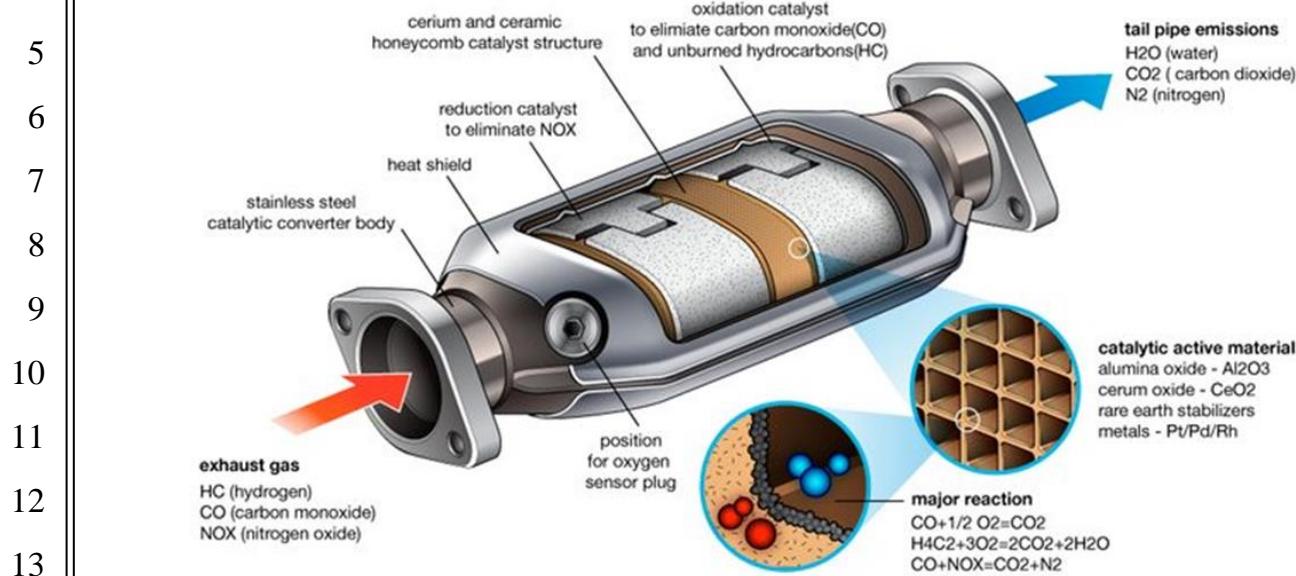
14 53. These catalysts change or “convert” the harmful compounds—CO, NOx, and
 15 hydrocarbons—into relatively harmless exhaust gases that do a fraction of the harm to air
 16 quality and the human respiratory system. This is accomplished in two ways: (1) a
 17 reduction catalyst and (2) an oxidation catalyst. The reduction catalyst creates harmless
 18 O₂ by using platinum and rhodium to separate the nitrogen and oxygen from NOx. The
 19
 20
 21
 22

23 26 *Tailpipe Emissions, Climate Change Connection* (Aug. 22, 2017),
 24 <https://climatechangeconnection.org/emissions/tailpipe-emissions/>.

25 27 *Automobile Emissions Reduction Efforts in the U.S. – Chronology*, EPA Air and
 26 Radiation Office of Mobile Services (1999), http://www.ehso.com/ehshome/auto-emissions_chronol.htm.

27 28 *What is a catalytic converter and how does it work?*, HowStuffWorks,
 28 <https://auto.howstuffworks.com/question66.htm> (last visited Mar. 15, 2019).

1 oxidation catalyst uses platinum and palladium to oxidize any unburned hydrocarbon and
 2 bind the O₂ with carbon to create CO₂.



15 Image: <https://catsays.blogspot.com/2018/06/is-catalytic-converter-important-how.html>

16 54. Modern catalytic converters are equipped with sensors and monitors that
 17 communicate with the Engine Control Module or Powertrain Control Module in the vehicle
 18 to regulate the air/fuel mixture within the engine and the emissions system. When the air-
 19 to-fuel mixture is rich, *i.e.*, the mixture contains slightly more fuel than the optimum ratio,
 20 there is a lower level of oxygen in the exhaust. This allows the reduction catalyst to break
 21 down NO_x. But to burn hydrocarbons and carbon monoxide, the catalytic converter needs
 22 more oxygen, so the air/fuel mixture has to go “lean”, *i.e.*, the mixture contains slightly
 23 less fuel and more air than the optimum ratio. This allows the catalyst to momentarily
 24

1 absorb oxygen and trigger a reaction that burns up the hydrocarbons and CO.²⁹ This
 2 constant back and forth, which happens without the drivers' knowledge, allows the vehicle
 3 to run cleanly while still maintaining promised fuel economy and power figures.
 4

5 55. A modern catalytic converter should last the life of the car or truck, assuming
 6 an "average" life of 100,000 miles or more (and often more than 200,000 miles). This is a
 7 good thing, given that catalytic converters utilize precious metals such as platinum,
 8 rhodium and/or palladium. The Class members here were not so lucky.
 9

10 D. **Injury to Consumers**

11 56. Fiat Chrysler's failure to meet U.S. emissions standards in nearly 900,000
 12 vehicles spanning model years from 2011-2016 harms consumers in numerous ways.
 13

14 57. At the outset, many consumers lack information about the emissions
 15 problems affecting their vehicles because FCA has not yet informed them. Thus, they are
 16 injured through lack of knowledge and information about their choices as consumers, and
 17 the impact this announcement may have on themselves and their families' vehicles. While
 18 waiting for repairs, many of the Class members' vehicles are an idled resource, unable to
 19 be used for any purpose. The announcement of the massive recall, moreover, sets forth a
 20 recall schedule spanning all of 2019, meaning that many consumers' ability to sell, trade,
 21 or otherwise dispose of their vehicles will be affected or impaired for many months, at a
 22 minimum.
 23

24
 25
 26 29 *Catalytic Converters & O2 Sensors*, AutoTap (2012),
 27 http://www.autotap.com/techlibrary/catalytic_converters_and_o2_sensors.asp (last
 28 visited Mar. 15, 2019).

1 58. However, Fiat Chrysler has known about the premature deterioration of
 2 catalytic converters in the Class Vehicles for, at the very least, several months.³⁰ According
 3 to FCA, the company “decided to recall the vehicles last year.” And while Defendants have
 4 been silent as to most consumers, Fiat Chrysler started sending an “interim notice” to
 5 Canadian consumers in August 2018 advising them that the Class Vehicles were equipped
 6 with catalytic converters that may release air pollutants that exceed Canadian emissions
 7 standards. Further, according to news reports, Fiat Chrysler factored the recall into their
 8 2018 budget long before they announced the recall on March 13, 2019.³¹ While “[t]he
 9 company declined to release the expected cost of the recall,” Fiat Chrysler has reported
 10 that the recall “was accounted for in last year's financial documents.”³²

11 59. In Fiat's Annual Report for 2018, the company alluded to potential recalls in
 12 its NAFTA sector without explicitly disclosing the recall which is the subject of this
 13 Action. Fiat Chrysler acknowledged early on in its report that a number of risks and
 14 uncertainties could impact the company's performance in 2019, including “various types
 15 of claims, lawsuits, governmental investigations and other contingencies affecting us,
 16 including product liability and warranty claims and environmental claims, investigations
 17 and lawsuits.”³³

22 30 Ryan Beene and Gabrielle Coppola, *supra* note 24.

23 31 Eric D. Lawrence, *supra*, note 7.

24 32 *Id.*

25 33 *Fiat Chrysler Automobiles N.V. Annual Report and Form 20-F for the year ended*
 December 31, 2018 (Dec. 31, 2018), https://www.fcagroup.com/en-US/investors/financial_regulatory/financial_reports/files/FCA_NV_2018_Annual_Report.pdf (at 10).

1 60. In its annual report Fiat Chrysler also warned shareholders of the dangers of
 2 product recalls, noting that such actions may “harm our reputation, force us to halt the sale
 3 of certain vehicles and cause consumers to question the safety and reliability of our
 4 products.”³⁴ Of course, all of these observations are true, and all have the potential to,
 5 among other impacts, reduce the market value of Fiat Chrysler vehicles, including the Class
 6 Vehicles.

7 61. It is also possible that new vehicles with the same or similar problems will
 8 come to light. For example, on March 14th, the Jeep Patriot was added to the EPA
 9 Announcement one day after the announcement went live. Consumers cannot be certain
 10 that the extent of the affected cars is known, or that the extent of the numbers and models
 11 of defective vehicles has been publicly announced.

12 62. Next, assuming consumers learn of the needed repairs, replacing the catalytic
 13 converters in hundreds of thousands of vehicles will be a substantial inconvenience to
 14 Plaintiff and class members. Vehicle owners have not been told when or where they can
 15 get their car fixed to be emissions compliant. All that has been announced is a rough
 16 schedule for the recall, spanning all of 2019, and that consumers “will receive a notification
 17 from FCA when parts are available for them to bring their vehicle in to be repaired[.]” It
 18 is not clear if FCA has the necessary supplies in stock at this point.³⁵

23
 24
 25
 26
 27 ³⁴ *Id.*
 28 ³⁵ *EPA Announcement, supra* note 13.

1 63. Add to this confusion the fact that for California, and perhaps other states'
 2 consumers, CARB requires that their vehicles must be fixed in order to pass emissions
 3 requirements for registration.
 4

5 64. According to the current repair schedule, the oldest vehicles will be repaired
 6 first. Model Year 2011 consumers will receive notification in Quarter One of 2019, Model
 7 Year 2012 consumers will receive notification in Quarter Two of 2019, Model Year
 8 2013/2014 consumers will receive notification in Quarter Three of 2019, and Model Year
 9 2015/2016 consumers will, allegedly, receive notification in Quarter Four of 2019.
 10

11 65. Because Quarter One of 2019 is coming to a close in a few weeks from the
 12 date of filing, it is possible, if not likely, that these repairs will extend into 2020, causing
 13 some drivers to continue driving non-compliant vehicles for at least one year.
 14

15 66. Even once the fix is available for consumers, consumers will be
 16 inconvenienced. While FCA states that owners and lessees of Class Vehicles will not pay
 17 fees for these repairs, they have not stated how they will compensate consumers for the
 18 cost of multiple trips to the dealerships or for reimbursement of alternative transportation
 19 costs in the likely scenario their vehicles are unable to be registered with state and local
 20 departments of motor vehicles.
 21

22 67. According to the EPA, “[o]wners who live in locations subject to inspection
 23 and maintenance may be required to have the recall performed prior to having the
 24 inspection performed.”³⁶ However, owners are also instructed that they “need to wait until
 25
 26

27 ³⁶ *Id.*
 28

1 they receive notification from FCA prior to scheduling an appointment at the dealership.”

2 There is no specification of what consumers should do if they are required to have an
3 inspection performed before they receive this notification from FCA.

4 68. Importantly, while they are waiting for a necessary fix, consumers in
5 California “who fail to get the necessary repairs will not be able to register their vehicles,”
6 according to the CARB. There are over 50,000 Class Vehicles in California alone.³⁷ Thus,
7 consumers in California may have no choice in the matter. They may have to spend the
8 time and suffer the inconvenience of having their Class Vehicles repaired, as smog checks
9 are required for most California vehicles every two years or upon registration of a new
10 vehicle (thus restricting owners’ ability to register their vehicles if they relocate to
11 California).

12 69. It is not yet clear what the registration impacts will be in many other states
13 that have either adopted CARB emissions standards or that impose emissions or other
14 reinspection requirements for vehicle registration.

15 70. In addition to the uncertainty surrounding the ability to register their vehicles
16 in the future, consumers are unsure how FCA’s proposed catalytic converter replacement
17 and software update will affect their vehicles’ existing warranties. They are also justifiably
18 concerned by potential out of pocket expenses imposed by dealerships prior to the fix.

19 71. Assuming, for the sake of argument, that the Class Vehicles can be brought
20 into compliance with emission standards without any degradation to performance or
21

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27 37 *CARB Announcement, supra* note 15.
28

maintenance characteristics—Class members would still have Class Vehicles that could not and did not deliver all of the characteristics for which they paid.

VI. CLASS ACTION ALLEGATIONS

A. Class Definitions

72. Pursuant to Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, Plaintiff brings this Action on behalf of herself, the Nationwide Class, and State Classes, defined as follows:

Nationwide Class: All persons or entities in the United States (including its territories and the District of Columbia) who purchased or leased a “Class Vehicle.”

73. In addition to the Nationwide class, and pursuant to Federal Rules of Civil Procedure Rule 23(c)(5), Plaintiff seeks to represent the following State Classes as well as any subclasses or issue classes as Plaintiff may propose and/or the Court may designate at the time of class certification:

Arizona Class: All persons or entities in the State of Arizona who purchased or leased a “Class Vehicle.”

74. For the purpose of these Class Definitions, "Class Vehicles" is defined to include:

- a. All 2011-2016 Model Year Dodge Journey vehicles equipped with Front-Wheel Drive;
 - b. All 2011-2014 Model Year Chrysler 200 / Dodge Avenger vehicles equipped with Front-Wheel Drive;

- 1 c. All 2011-2012 Model Year Dodge Caliber vehicles equipped with
2 Front-Wheel Drive and a Continuously Variable Transmission; and
3 d. All 2011-2016 MY Jeep Compass/Patriot vehicles equipped with Front-
4 Wheel Drive and a Continuously Variable Transmission Class Vehicles
5

6 75. Excluded from the Class are Defendants and their subsidiaries and affiliates;
7 all persons who make a timely election to be excluded from the Class; governmental
8 entities; and the Judge to whom this case is assigned and his/her immediate family. Also
9 excluded from the Classes are individuals with personal injury claims resulting from the
10 Class Vehicles.

12 76. Plaintiff reserves the right to revise the Class definition based upon
13 information learned through discovery and investigation.

15 77. Plaintiff also reserves the right to modify the definition of the Nationwide
16 and/or any State Class prior to class certification.

17 **B. Class Certification Requirements**

19 78. Certification of Plaintiff's claims for classwide treatment is appropriate
20 because Plaintiff can prove the elements of his claims regarding liability and entitlement
21 to damages on a classwide basis using the same evidence as would be used to prove those
22 elements in individual actions alleging the same claim. This Action has been brought and
23 may be properly maintained on behalf of the Nationwide Class and/or State Class proposed
24 herein under Federal Rule of Civil Procedure 23.

26 79. **Numerosity: Rule 23(a)(1):** The members of the Class are so numerous and
27 geographically dispersed that individual joinder of all Class members is impracticable.

1 **80. Commonality and Predominance: Federal Rule of Civil Procedure**

2 **23(a)(2) and 23(b)(3):** This Action involves common questions of law and fact, which
3 predominate over any questions affecting individual Class members, including, without
4 limitation:

5 81. Whether Defendants engaged in the conduct alleged herein;

6 a. Whether Defendants designed, advertised, marketed, distributed, leased,
7 sold, or otherwise placed Class Vehicles into the stream of commerce in
8 the United States;

9 b. Whether the Class Vehicles have the defects alleged herein, including
10 whether the emissions control system and/or catalytic converters in the
11 Class Vehicles contain a defect;

12 c. Whether the Class Vehicles fail to comply with EPA and/or state
13 regulatory requirements regarding emissions;

14 d. Whether the emissions control systems in Class Vehicles can be made to
15 comply with EPA, CARB, and other required standards without
16 substantially degrading the performance of the Class Vehicles;

17 e. Whether Defendants knew or should have known that the Class
18 Vehicles contained defects as alleged herein;

19 f. When Defendants discovered, knew, or should have known of the
20 existence of the defects alleged herein;

- 1 g. Whether a reasonable consumer would consider the defects alleged
2 herein and their consequences material to the decision to purchase or
3 lease a Class Vehicle;
- 4 h. Whether Plaintiff and the other Class members overpaid for their Class
5 Vehicles as a result of the defects and Defendants' concealment thereof;
- 6 i. Whether Plaintiff suffered out-of-pocket losses as a result of the defects
7 alleged herein and whether they will suffer out-of-pocket losses as a
8 result of the proposed recalls;
- 9 j. Whether Defendants had a duty to disclose the true nature of the Class
10 Vehicles to Plaintiff and Class members;
- 11 k. Whether Defendants omitted, concealed, and/or failed to disclose
12 material facts about the Class Vehicles;
- 13 l. Whether Defendants knew or should of known that the Class Vehicles'
14 emissions systems would function as intended throughout their useful
15 life;
- 16 m. Whether Defendants' concealment of the true nature of the Class
17 Vehicles would have induced a reasonable consumer to act to his or her
18 detriment by purchasing and/or leasing the Class Vehicles;
- 19 n. Whether Defendants' conduct violates consumer protection statutes,
20 warranty laws, and other laws as asserted herein;
- 21 o. Whether the remedies proposed by Defendants for the Class Vehicles
22 would constitutes adequate and appropriate relief for the class;

KELLER ROHRBACK L.L.P.
3101 North Central Avenue, Suite 1400
Phoenix, Arizona 85012
Telephone: (602) 248-0088
Facsimile: (602) 248-2822

- 1 p. Whether Plaintiff and the other Class members are entitled to equitable
2 relief, including, but not limited to, restitution or injunctive relief; and
3 q. Whether Plaintiff and the other Class members are entitled to equitable
4 relief, including, but not limited to, restitution or injunctive relief;

5 82. **Typicality: Rule 23(a)(3):** Plaintiff's claims are typical of the claims of the
6 Class members whom they seek to represent under Federal Rule of Civil Procedure
7 23(a)(3) because Plaintiff and each Class member purchased a Class Vehicle and were
8 similarly injured through Defendants' wrongful conduct as described above. Plaintiff and
9 the other Class members suffered damages as a direct, proximate result of the same
10 wrongful practices by Defendants. Plaintiff's claims arise from the same practices and
11 courses of conduct that give rise to the claims of the other Class members. Plaintiff's
12 claims are based upon the same legal theories as the claims of the other Class members.

13 83. **Adequacy: Rule 23(a)(4):** Plaintiff will fairly and adequately represent and
14 protect the interests of the Class members as required by Federal Rule of Civil Procedure
15 23(a)(4). Plaintiff has retained counsel competent and experienced in complex class action
16 litigation, including vehicle defect litigation and other consumer protection litigation.
17 Plaintiff intends to prosecute this Action vigorously. Neither Plaintiff nor his counsel have
18 interests that conflict with the interests of the other Class members. Therefore, the interests
19 of the Class members will be fairly and adequately protected.

20 84. **Declaratory and Injunctive Relief: Rule 23(b)(2):** Defendants have acted
21 or refused to act on grounds generally applicable to Plaintiff and the other members of the
22

Class, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the Class as a whole.

85. **Superiority: Rule 23(b)(3):** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiff and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendants, so it would be impracticable for members of the Class to individually seek redress for Defendants' wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

VII. ANY APPLICABLE STATUTES OF LIMITATION ARE TOLLED

86. For the following reasons, any otherwise-applicable statutes of limitation have been tolled by the discovery rule with respect to all claims.

87. Through the exercise of reasonable diligence, and within any applicable statutes of limitation, Plaintiff and members of the proposed Class could not have discovered that Defendants were failing to inform consumers and concealing and misrepresenting the true emissions levels of their vehicles.

1 88. Plaintiff and the other Class members could not have reasonably discovered,
2 and did not know of facts that would have caused a reasonable person to suspect, that
3 Defendants may have failed to report information within their knowledge to consumers
4 until shortly before this Action was filed.
5

6 89. Likewise, a reasonable and diligent investigation could not have disclosed
7 that Defendants had information in their possession about the existence of its sophisticated
8 emissions deception and that they omitted and concealed that information, which was only
9 discovered by Plaintiff shortly before this Action was filed.
10

11 **A. Tolling Due To Defendants' Concealment**

12 90. Throughout the relevant time period, all applicable statutes of limitation have
13 been tolled by Defendants' knowing and active concealment and denial of the facts alleged
14 in this Complaint.
15

16 91. Upon information and belief, prior to the date of this Complaint, if not earlier,
17 Defendants knew of the faulty emissions systems in the Class Vehicles, but continued to
18 distribute, sell, and/or lease the Class Vehicles to Plaintiff and the class members. In doing
19 so, Defendants concealed and expressly denied the existence of problem with excess
20 emissions, and/or failed to notify Plaintiff and the Class members about the true nature of
21 the Class Vehicles.
22

23 92. Instead of disclosing their deception, or that the emissions from the Class
24 Vehicles were far worse than represented, Defendants falsely represented that its vehicles
25 complied with federal and state emissions standards, and that they were reputable
26 manufacturers whose representations could be trusted.
27

B. Estoppel

93. Defendants have a continuous and ongoing duty to tell the truth about their products and to disclose to Plaintiff and the other Class members the facts that they knew about the emissions from Class Vehicles, and of those vehicles' failure to comply with federal and state laws.

94. Although they had the duty throughout the relevant period to disclose to Plaintiff and Class members that they had engaged in the deception described in this Complaint, Defendants chose to evade federal and state emissions and clean air standards with respect to the Class Vehicles, and intentionally misrepresented their blatant and deceptive lack of compliance with federal and state law regulating vehicle emissions and clean air.

95. Defendants actively concealed the true character, quality, performance, and nature of the emissions systems in the Class Vehicles, and Plaintiff and the class members reasonably relied upon Defendants' knowing and active concealment of these facts.

96. Thus, Defendants are estopped from relying on any statutes of limitations in defense of this Action.

VIII. CLAIMS FOR RELIEF

A. Claims Asserted on Behalf of the Nationwide Class

COUNT I

BREACH OF IMPLIED AND WRITTEN WARRANTY

Magnuson - Moss Warranty Act (15 U.S.C. §§ 2301, et seq.)

1 97. Plaintiff incorporates by reference all preceding allegations as though fully
2 set forth herein.

3 98. Plaintiff brings this cause of action on behalf of herself and the Nationwide
4 Class against Defendants.

5 99. This Court has jurisdiction to decide claims brought under 15 U.S.C. § 2301
6 by virtue of 28 U.S.C. § 1332 (a)-(d).

7 100. Plaintiff and members of the Class are “consumers” within the meaning of
8 15 U.S.C. § 2301(3).

9 101. Defendants are a “supplier” and “warrantor” within the meaning of 15 U.S.C.
10 § 2301(4) and (5), respectively.

11 102. The Class Vehicles are “consumer products” within the meaning of 15
12 U.S.C. § 2301(1).

13 103. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who is
14 damaged by the failure of a warrantor to comply with a written or implied warranty.

15 104. The amount in controversy of Plaintiff’s individual claims meets or exceeds
16 \$25.00 in value. In addition, the amount in controversy meets or exceeds \$50,000 in value
17 (exclusive of interest and costs) on the basis of all claims to be determined in this lawsuit.

18 105. Defendants provided Plaintiff and each member of the Class with “written
19 warranties” and “implied warranties,” as identified above, which are covered under 15
20 U.S.C. § 2301(6) and (7), respectively.

21 106. The terms of these warranties became part of the basis of the bargain when
22 Plaintiff and each member of the Class purchased their Class Vehicles.

1 107. Defendants breached these written and implied warranties as described in
2 detail above. Without limitation, the Class Vehicles share a common design defect in that
3 they currently emit more pollutants than: (a) is allowable under the applicable regulations,
4 and (b) was revealed to regulators, consumers, and the driving public. Without limitation,
5 the Class Vehicles share common defects requiring replacement of the Class Vehicles
6 catalytic converters and other repairs and/or modifications to the emissions control systems
7 of the Class Vehicles.
8

9 108. Plaintiff and each member of the Class have had sufficient direct dealings
10 with Defendants or its agents (including dealerships) to establish privity of contract
11 between Defendants, on the one hand, and Plaintiff and each member of the Class, on the
12 other hand. Nonetheless, privity is not required here because Plaintiff and each member of
13 the Class are intended third-party beneficiaries of contracts between Defendants and their
14 dealers, and specifically, of Defendants' implied warranties. The dealers were not intended
15 to be the ultimate consumers of the Class Vehicles and have no rights under the warranty
16 agreements provided with the Class Vehicles; the warranty agreements were designed for
17 and intended to benefit consumers only.
18

19 109. Affording Defendants a reasonable opportunity to cure its breach of written
20 warranties would be unnecessary and futile. At the time of sale or lease of each Class
21 Vehicle, Defendants knew, or should have known, of their misrepresentations and/or
22 material omissions concerning the Class Vehicles' inability to perform as warranted, but
23 nonetheless failed to rectify the situation and/or disclose the design defect. Under the
24 circumstances, the remedies available under any informal settlement procedure would be
25
26
27
28

1 inadequate and any requirement that Plaintiff or members of the Class resort to an informal
2 dispute resolution procedure and/or afford Defendants a reasonable opportunity to cure its
3 breach of warranties is excused and thereby deemed satisfied.
4

5 110. In addition, given the conduct described herein, any attempts by Defendants,
6 in their capacity as warrantors, to limit the implied warranties in a manner that would
7 exclude coverage of the defect is unconscionable and any such effort to disclaim, or
8 otherwise limit, liability for the defect is null and void.
9

10 111. As a direct and proximate result of Defendants' breach of the written and
11 implied warranties, Plaintiff and each member of the Class have suffered damages.
12

13 112. Plaintiff, individually and on behalf of the Class, seek all damages permitted
14 by law, including compensation for the monetary difference between the Class Vehicles as
15 warranted and as sold; compensation for the reduction in resale value; the cost of
16 purchasing, leasing, or renting replacement vehicles, along with all other incidental and
17 consequential damages, statutory attorney fees, and all other relief allowed by law.
18

19 113. The warranty laws of each state, which are incorporated into this claim, are
20 set forth below.
21

COUNT II
VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT
(Mich. Comp. Laws § 445.903, *et seq.*)

22 114. Plaintiff incorporates by reference each preceding paragraph as though fully
23 set forth herein.
24

25 115. Plaintiff brings this cause of action on behalf of herself and the Nationwide
26 Class against all Defendants.
27

1 116. Michigan state law applies to the claims of the nationwide class because
2 Defendants' United States operations are headquartered in Michigan. Although these
3 actions take place and have effect wherever in the United States the vehicles are sold,
4 leased, registered, and operated, Defendants' operations for distributing, engineering and
5 testing, marketing, warranting and supervising service of the Class Vehicles are located
6 in Michigan, and on information and belief, many of the decisions concerning Defendants'
7 unfair, deceptive, and unlawful conduct emanated from these Michigan headquarters.
8

9 117. The Michigan Consumer Protection Act ("Michigan CPA") makes unlawful
10 "[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade
11 or commerce" Mich. Comp. Laws § 445.903(1).

12 118. Defendants, Plaintiff, and the Michigan State Class members are "persons"
13 within the meaning of Mich. Comp. Laws § 445.902(1)(d).

14 119. Defendants are engaged in "trade" or "commerce" within the meaning of
15 Mich. Comp. Laws § 445.902(1)(g).

16 120. In the course of their business, Defendants, through their agents, employees,
17 and/or subsidiaries, violated the Michigan CPA. In so doing, and by marketing, offering
18 for sale, and selling the defective Class Vehicles, Defendants engaged in one or more of
19 the following unfair or deceptive acts or practices as defined in Mich. Comp. Laws §
20 445.903(1):
21

- 22 a. Causing likelihood of confusion or of misunderstanding as to the
23 approval or continuing certification of the Class Vehicles by, among
24 other things and upon information and belief, omitting, concealing and
25

suppressing the fact that the Class Vehicles did not achieve their represented fuel efficiency and emissions standards, and emitted unlawfully high levels of pollutants such as NOx.

- b. Representing that the Class Vehicles have continuing approval, characteristics, uses, or benefits that they do not have by, among other things, concealing and/or failing to timely disclose to consumers the fact that the Class Vehicles had defective emission controls and defective catalytic convertors.
 - c. Representing that the Class Vehicles are of a particular and continuing standard, quality and grade when they are not for the reasons described above.
 - d. Engaging in other conduct which created a likelihood of confusion or of misunderstanding for the reasons described above.

121. Had they known the truth, Plaintiff and Class members would not have purchased or leased the Class Vehicles, or—if the Class Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have paid significantly less for them.

122. Plaintiff and Class members had no way of discerning that Defendants' representations were false and misleading, or otherwise learning the facts that Defendants had concealed or failed to disclose.

123. Defendants had an ongoing duty to Plaintiff and the Class to refrain from unfair and deceptive practices under the Michigan CPA in the course of their business.

Specifically, Defendants owed Plaintiff and the Class members a duty to disclose all the material facts concerning the Class Vehicles, they intentionally concealed it from Plaintiff and the Class, and/or they made misrepresentations that were rendered misleading because they were contradicted by withheld facts.

124. Plaintiff and Class members suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' concealment, misrepresentations, and/or failure to disclose material information. Plaintiff and the members of the Class have sustained damage because purchased vehicles that were not as represented; because their ability to sell, trade or dispose of them has been compromised; because they own Class Vehicles that should never have been placed in the stream of commerce; and because they are diminished in value as a result of Defendants' fraud.

125. Defendants' violations present a continuing risk to Plaintiff and the Class, as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

126. Pursuant to Mich. Comp. Laws § 445.911, Plaintiff and the Nationwide Class seek an order enjoining Defendants' unfair and/or deceptive acts or practices, and awarding damages, punitive damages, and any other just and proper relief available under the Michigan CPA.

COUNT III
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(Mich. Comp. Laws §§ 440.2314 and 440.2860)

127. Plaintiff realleges and incorporates by reference all allegations of the preceding paragraphs as though fully set forth herein.

1 128. Plaintiff brings this Action on behalf of herself and the Nationwide Class
2 against Defendants.

3 129. Michigan state law applies to the claims of the nationwide class because
4 Defendants' United States operations are headquartered in Michigan. Although these
5 actions take place and have effect wherever in the United States the vehicles are sold,
6 leased, registered, and operated, Defendants' operations for distributing, engineering and
7 testing, marketing, warrantying and supervising service of the Class Vehicles are located
8 in Michigan, and on information and belief, many of the decisions concerning Defendants'
9 unfair, deceptive, and unlawful conduct emanated from these Michigan headquarters.

10 130. Defendants were at all relevant times "merchants" with respect to motor
11 vehicles under Mich. Comp. Laws § 440.2104(1) and "sellers" of motor vehicles under §
12 440.2103(1)(c).

13 131. With respect to leases, Defendants are and were at all relevant times "lessors"
14 of motor vehicles under Mich. Comp. Laws § 440.2803(1)(p).

15 132. The Class Vehicles are and were at all relevant times "goods" within the
16 meaning of Mich. Comp. Laws §§ 440.2105(1) and 440.2803(1)(h).

17 133. A warranty that the Class Vehicles were in merchantable condition and fit
18 for the ordinary purpose for which vehicles are used is implied by law pursuant to Mich.
19 Comp. Laws §§ 440.2314 and 440.2862.

20 134. Defendants sold and/or leased Class Vehicles that were not in merchantable
21 condition and/or fit for their ordinary purpose in violation of the implied warranty. The
22 Class Vehicles were not in merchantable condition because their emissions violate state
23

and federal laws. The Class Vehicles were not fit for their ordinary purpose as their emissions control systems and catalytic converters were defective.

135. Defendants' breaches of the implied warranty of merchantability caused damage to the Plaintiff and the Nationwide Class. The amount of damages due will be proven at trial.

B. State Class Consumer Protection Claims

COUNT IV
VIOLATIONS OF THE ARIZONA CONSUMER FRAUD ACT
Ariz. Rev. Stat. § 44-1521, *et seq.*

136. Plaintiff realleges and incorporates by reference all allegations of the preceding paragraphs as though fully set forth herein.

137. Plaintiff brings this count on behalf of herself and the Arizona State Class
against all Defendants.

138. Defendants, Plaintiff, and the Arizona State Class members are “persons” within the meaning of the Arizona Consumer Fraud Act (“Arizona CFA”), Ariz. Rev. Stat. § 44-1521(6).

139. The Class Vehicles are “merchandise” within the meaning of Ariz. Rev. Stat. § 44-1521(5).

140. The Arizona CFA provides that “[t]he act, use or employment by any person of any deception, deceptive act or practice, fraud, ... misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale ... of any merchandise

1 whether or not any person has in fact been misled, deceived or damaged thereby, is declared
2 to be an unlawful practice.” Ariz. Rev. Stat. § 44-1522(A).

3 141. In the course of their business, Defendants, through their agents, employees,
4 and/or subsidiaries, violated the Arizona CFA. As described above:

5 A. Defendants concealed, suppressed, omitted and failed to disclose
6 material facts about the Class Vehicles in connection with their sale and
7 advertisement of the Class Vehicles, causing likelihood of confusion or of
8 misunderstanding as to the approval or continuing certification of the Class Vehicles
9 by, among other things and upon information and belief, omitting, concealing and
10 suppressing the fact that the Class Vehicles did not achieve their represented fuel
11 efficiency and emissions standards, and emitted unlawfully high levels of pollutants
12 such as NOx;

13 B. Defendants omitted material facts regarding the Class Vehicles’
14 continuing approval, characteristics, uses, and benefits that they do not have by,
15 among other things, concealing and/or failing to timely disclose to consumers the
16 fact that the Class Vehicles had defective emission controls and defective catalytic
17 convertors, and Defendants represented that the Class Vehicles are of a particular
18 and continuing standard, quality and grade when they are not, for the reasons set
19 forth above; and

20 C. Defendants engaged in other conduct which created a likelihood of
21 confusion or of misunderstanding.

1 142. Defendants' scheme and concealment of the true characteristics and
2 continuing performance of the emission control systems in the Class Vehicles were
3 material to Plaintiff and the Arizona State Class, as Defendants intended. Had they known
4 the truth, Plaintiff and the Arizona State Class would not have purchased or leased the
5 Class Vehicles, or—if the Class Vehicles' true nature and performance had been
6 disclosed—would have paid significantly less for them.

7 143. Plaintiff and Arizona State Class members had no way of discerning that
8 Defendants' representations were false and misleading, or otherwise learning the facts that
9 Defendants had concealed or failed to disclose, because Defendants' emission control
10 systems contained sophisticated technology. Plaintiff and Arizona State Class members
11 did not, and could not, unravel Defendants' deception on their own.

12 144. Defendants had an ongoing duty to Plaintiff and the Arizona State Class to
13 refrain from unfair and deceptive practices under the Arizona CFA in the course of their
14 business. Specifically, Defendants owed Plaintiff and Arizona State Class members a duty
15 to disclose all the material facts concerning the Class Vehicles' emission control systems
16 because they possessed exclusive knowledge, they intentionally concealed it from Plaintiff
17 and the Arizona State Class, and/or they made misrepresentations that were rendered
18 misleading because they were contradicted by withheld facts.

19 145. Plaintiff and Arizona State Class members suffered ascertainable loss and
20 actual damages as a direct and proximate result of Defendants' concealment,
21 misrepresentations, and/or failure to disclose material information. But for Defendants'
22 concealment, Plaintiff and the members of the Class would not have purchased the Class
23

Vehicles or would have paid less for them, because the value of their vehicles has been impaired. Plaintiff and the members of the Class have sustained damage because purchased vehicles that were not as represented; because their ability to sell, trade or dispose of them; because they own Class Vehicles that should never have been placed in the stream of commerce; and because they are diminished in value as a result of Defendants' fraud.

146. Defendants' violations present a continuing risk to Plaintiff and the Arizona State Class, as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

147. Plaintiff and the Arizona State Class seek monetary relief against Defendants in an amount to be determined at trial. Plaintiff and the Arizona State Class also seek punitive damages because Defendants engaged in aggravated and outrageous conduct with an evil mind.

148. Plaintiff and the Arizona State Class also seek an order enjoining Defendants' unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under the Arizona CFA.

COUNT V
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
Ariz. Rev. Stat. §§ 47-2314 and 47-2A212

149. Plaintiff realleges and incorporates by reference all allegations of the preceding paragraphs as though fully set forth herein.

150. Plaintiff brings this Action on behalf of herself and the Arizona State Class against Defendants.

151. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Ariz. Rev. Stat. §§ 47-2104(A) and 47-2a103(c); and is a “seller” of motor vehicles under Ariz. Rev. Stat. § 47-2103(A)(4).

152. With respect to leases, Defendants are and were at all relevant times a “lessor[s]” of motor vehicles under Ariz. Rev. Stat. § 47-2a103(A)(16).

153. The Class Vehicles are and were at all relevant times "goods" within the meaning of Ariz. Rev. Stat. §§ 47-2105(A) and 47-2a103(A)(8).

154. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Ariz. Rev. Stat. §§ 47-2314 and 47-2a212.

155. Defendants sold and/or leased Class Vehicles that were not in merchantable condition and/or fit for their ordinary purpose in violation of the implied warranty. The Class Vehicles were not in merchantable condition because their emissions violate state and federal laws. The Class Vehicles were not fit for their ordinary purpose as their emissions control systems and catalytic converters were defective.

156. Defendants' breaches of the implied warranty of merchantability caused damage to the Plaintiff and the Arizona State Class. The amount of damages due will be proven at trial.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of members of the Nationwide Class and Arizona State Class, respectfully requests that the Court grant certification of the proposed Nationwide Class and Arizona State Class, including the

1 designation of Plaintiff as the named representative of the Nationwide Class and Arizona
2 State Class, the appointment of the undersigned as Class Counsel, and the designation of
3 any appropriate issue classes and/or subclasses, under the applicable provisions of Fed. R.
4 Civ. P. 23, and that the Court enter judgment in their favor and against Defendants, as
5 follows:

- 7 a. A declaration that any applicable statutes of limitation are tolled due to
8 the fraudulent concealment alleged in this complaint, and that
9 Defendants are estopped from relying on any statutes of limitations in
10 defense;
- 12 b. An order enjoining Defendants from continuing the unlawful, deceptive,
13 fraudulent, and unfair business practices alleged in this Complaint;
- 15 c. Injunctive and equitable relief in the form of a comprehensive program
16 to repair and modify all Class Vehicles, and to fully reimburse and make
17 whole all Class members for all costs and economic losses that the Class
18 Vehicles could incur by being brought into compliance with federal and
19 state law;
- 21 d. Environmental reparations, mitigation, and remediation to offset the
22 harm caused by the Class Vehicles, based on the mileage driven by all
23 Class Vehicles and/or other appropriate measures of environmental
24 harm;

KELLER ROHRBACK L.L.P.
3101 North Central Avenue, Suite 1400
Phoenix, Arizona 85012
Telephone: (602) 248-0088
Facsimile: (602) 248-2822

- 1 e. Costs, restitution, compensatory damages for economic loss and out-of-
- 2 pocket costs, multiple damages under applicable states' laws, punitive
- 3 and exemplary damages under applicable law;
- 4 f. A determination that Defendants are financially responsible for all Class
- 5 notice and administration of Class relief;
- 6 g. Any and all applicable statutory and civil penalties;
- 7 h. An order requiring Defendants to pay both pre- and post-judgment
- 8 interest on any amounts awarded;
- 9 i. An award of costs and attorneys' fees;
- 10 j. Leave to amend this Complaint to conform to the evidence produced in
- 11 discovery and at trial; and
- 12 k. Such other or further relief as the Court may deem appropriate, just, and
- 13 equitable.

14 **X. DEMAND FOR JURY TRIAL**

15 Pursuant to Federal Rule of Civil Procedure 38 (b), Plaintiff demands a jury trial.

16
17 DATED this 29th day of March, 2019.

KELLER ROHRBACK L.L.P.
3101 North Central Avenue, Suite 1400
Phoenix, Arizona 85012
Telephone: (602) 248-0088
Facsimile: (602) 248-2822

1 KELLER ROHRBACK L.L.P.
2
3
4

5 By: s/ Ron Kilgard
6

7 Ron Kilgard, AZ Bar No. 005902
8 KELLER ROHRBACK L.L.P.
9 3101 North Central Avenue, Suite 1400
10 Phoenix, Arizona 85012-2600
11 Telephone: (602) 248-0088
12 Facsimile: (602) 248-2822
13 rkilgard@kellerrohrback.com

14 Lynn Lincoln Sarko,
15 (pro hac vice forthcoming)
16 Gretchen Freeman Cappio,
17 (pro hac vice forthcoming)
18 Ryan McDevitt,
19 (pro hac vice forthcoming)
20 Rachel Morowitz,
21 (pro hac vice forthcoming)
22 KELLER ROHRBACK L.L.P.
23 1201 Third Avenue, Suite 3200
24 Seattle, WA 98101-3052
25 Telephone: (206) 623-1900
26 Facsimile: (206) 623-3384
27 lsarko@kellerrohrback.com
28 gcappio@kellerrohrback.com
rmcdevitt@kellerrohrback.com
rmorowitz@kellerrohrback.com

29 Alison Chase, AZ Bar No. 028987
30 KELLER ROHRBACK L.L.P.
31 801 Garden Street, Suite 301
32 Santa Barbara, CA 93101
33 Telephone: (805) 456-1496
34 Facsimile: (805) 456-1497
achase@kellerrohrback.com

35 *Attorneys for Plaintiffs*
36
37
38

KELLER ROHRBACK L.L.P.
3101 North Central Avenue, Suite 1400
Phoenix, Arizona 85012
Telephone: (602) 248-0088
Facsimile: (602) 248-2822